



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 32] नई दिल्ली, बुधवार, अगस्त 29, 2007 / भाद्र 7, 1929

No. 32] NEW DELHI, WEDNESDAY, AUGUST 29, 2007 / BHADRA 7, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 29th August, 2007:—

BILL NO. 70 OF 2007

A Bill to amend the Competition Act, 2002.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1.(1) This Act may be called the Competition (Amendment) Act, 2007.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

12 of 2003.

2. In section 2 of the Competition Act, 2002 (hereinafter referred to as the principal Act), after clause (b), the following clause shall be inserted, namely:—

Amendment of section 2.

(ba) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of section 53A.'

Amendment of
section 4.

3. In section 4 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No enterprise or group shall abuse its dominant position.”;

(ii) in sub-section (2),—

(a) for the words, brackets and figure “under sub-section (1), if an enterprise”, the words, brackets and figure “sub-section (1), if an enterprise or a group” shall be substituted;

(b) in clause (c), after the word “access”, the words “in any manner” shall be inserted;

(iii) after sub-section (2), in the *Explanation*, after clause (b), the following clause shall be inserted, namely:—“(c) ‘group’ shall have the same meaning as assigned to it in clause (b) of the *Explanation* to section 5.”.Amendment of
section 5.

4. In section 5 of the principal Act, in clause (a),—

(a) in sub-clause (i), for item (B), the following item shall be substituted, namely:—

“(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or”

(b) in sub-clause (ii), for item (B), the following item shall be substituted, namely:—

“(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or”

Amendment of
section 6.

5. In section 6 of the principal Act, in sub-section (2),—

(a) for the words “may, at his or its option,”, the word “shall” shall be substituted;

(b) for the words “seven days”, the words “thirty days” shall be substituted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.”.

Substitution of
new section for
section 8.Composition of
Commission.

6. For section 8 of the principal Act, the following section shall be substituted, namely:—

“8. (1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

(3) The Chairperson and other Members shall be whole-time Members.”.

7. For section 9 of the principal Act, the following section shall be substituted, namely:—

“9. (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

(a) the Chief Justice of India or his nomineeChairperson;

(b) the Secretary in the Ministry of Corporate AffairsMember;

(c) the Secretary in the Ministry of Law and Justice Member;

(d) two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.....Members.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.”.

8. In section 10 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.”.

9. In section 12 of the principal Act, for the words “one year”, the words “two years” shall be substituted.

10. For section 13 of the principal Act, the following section shall be substituted, namely:—

“13. The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.”.

11. In section 16 of the principal Act, —

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

(1A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.”;

(b) in sub-section (2), for the words “such other advisers, consultants and officers,” the words “such officers or other employees,” shall be substituted;

(c) in sub-sections (3) and (4), for the words “such other advisers, consultants or officers,” the words “such officers or other employees,” shall be substituted.

Substitution of new section for section 9.

Selection Committee for Chairperson and Members of Commission.

Amendment of section 10.

Amendment of section 12.

Substitution of new section for section 13.

Administrative powers of Chairperson.

Amendment of section 16.

Substitution of new section for section 17.

Appointment of Secretary, experts, professionals and officers and other employees of Commission.

Amendment of section 19.

Amendment of section 20.

Amendment of section 21.

Insertion of new section 21A.

Reference by Commission.

Substitution of new section for section 22.

Meetings of Commission.

12. For section 17 of the principal Act, the following section shall be substituted, namely:—

“17. (1) The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to and other terms and conditions of service of the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

(3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.”.

13. In section 19 of the principal Act, in sub-section (1), in clause (a), for the words “receipt of a complaint,”, the words “receipt of any information, in such manner and” shall be substituted.

14. In section 20 of the principal Act, in sub-section (2), the words, brackets and figures “or upon receipt of a reference under sub-section (1) of section 21” shall be omitted.

15. In section 21 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that any statutory authority, may, *suo motu*, make such a reference to the Commission.”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.”.

16. After section 21 of the principal Act, the following section shall be inserted, namely:—

“21A.(1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

Provided that the Commission, may, *suo motu*, make such a reference to the statutory authority.

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.”.

17. For section 22 of the principal Act, the following section shall be substituted, namely:—

“22.(1) The Commission shall meet at such times and such places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations.

(2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote:

Provided that the quorum for such meeting shall be three Members.”.

18. Sections 23, 24 and 25 of the principal Act shall be omitted.

Omission of sections 23, 24 and 25.

19. For section 26 of the principal Act, the following section shall be substituted, namely: —

Substitution of new section for section 26.

“26.(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on a reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.”.

Amendment of
section 27.

20. In section 27 of the principal Act,—

(i) in clause (b), for the proviso, the following proviso shall be substituted, namely:—

“Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.”;

(ii) clauses (c) and (f) shall be omitted;

(iii) in clause (g), for the word “order”, the words “order or issue such directions” shall be substituted;

(iv) after clause (g), the following proviso shall be inserted, namely:—

“Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the *Explanation* to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.”.

Amendment of
section 28.

21. In section 28 of the principal Act,—

(a) in sub-section (1), for the words, brackets, letter and figures “Central Government, on recommendation under clause (f) of section 27”, the word “Commission” shall be substituted;

(b) clause (d) of sub-section (2) shall be omitted.

Amendment of
section 29.

22. In section 29 of the principal Act,—

(a) in sub-section (1), after the words “Where the Commission is of the”, the words “*prima facie*” shall be inserted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.”;

(c) in sub-section (2), after the words “parties to the combination”, the words, brackets, figure and letter “or the receipt of the report from Director General called under sub-section (1A), whichever is later” shall be inserted.

23. For section 30 of the principal Act, the following section shall be substituted, namely:—

“30. Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its *prima facie* opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.”.

24. In section 31 of the principal Act, in sub-section (1),—

(a) for the words, brackets and figures “ninety working days from the date of publication referred to in sub-section (2) of section 29”, the words, brackets and figures “two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6” shall be substituted;

(b) in the *Explanation*, for the words “ninety working”, the words “two hundred and ten” shall be substituted.

25. In section 32 of the principal Act, after clause (f),—

(a) after the words “have power to inquire”, the words and figures “in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act” shall be inserted;

(b) after the words “relevant market in India”, occurring at the end, the words “and pass such orders as it may deem fit in accordance with the provisions of this Act” shall be inserted.

26. For section 33 of the principal Act, the following section shall be substituted, namely:—

“33. Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.”.

27. Section 34 of the principal Act shall be omitted.

Omission of section 34.

28. In section 35 of the principal Act, for the words “complainant or defendant”, the words “person or an enterprise” shall be substituted.

Amendment of section 35.

29. For section 36 of the principal Act, the following section shall be substituted, namely:—

“36. (1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

Substitution of new section for section 36.

Power of Commission to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents;

Substitution of new section for section 30.

Procedure in case of notice under sub-section (2) of section 6.

Amendment of section 31.

Amendment of section 32.

Substitution of new section for section 33.

Power to issue interim orders.

Omission of section 34.

Amendment of section 35.

Substitution of new section for section 36.

Power of Commission to regulate its own procedure.

(e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, any public record or document or copy of such record or document from any office. 1 of 1872.

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person —

(a) to produce before the Director General or the Secretary or an officer authorised by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(b) to furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person as may be required for the purposes of this Act.”.

Omission of
section 37.

30. Section 37 of the principal Act shall be omitted.

Substitution of
new section for
section 39.

31. For section 39 of the principal Act, the following section shall be substituted, namely: —

Execution of
orders of
Commission
imposing
monetary
penalty.

“39. (1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.

(2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act. 43 of 1961.

(3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made thereunder shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Assessing Officer. 43 of 1961.

Explanation 1.—Any reference to sub-section (2) or sub-section (6) of section 220 of the Income-tax Act, 1961, in the said provisions of that Act or the rules made thereunder shall be construed as references to sections 43 to 45 of this Act. 43 of 1961.

Explanation 2.—The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961 shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act. 43 of 1961.

Explanation 3.—Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.”. 43 of 1961.

32. Section 40 of the principal Act shall be omitted.

Omission of section 40.

33. In section 41 of the principal Act, the following *Explanation* shall be inserted, namely:—

Amendment of section 41.

Explanation.— For the purposes of this section,—

(a) the words “the Central Government” under section 240 of the Companies Act, 1956 shall be construed as “the Commission”;

(b) the word “Magistrate” under section 240A of the Companies Act, 1956 shall be construed as “the Chief Metropolitan Magistrate, Delhi”.

34. For section 42 of the principal Act, the following section shall be substituted, namely:—

“42. (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

Substitution of new section for section 42.

(2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

Contravention of orders of Commission.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.”

35. After section 42 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 42A.

“42A. Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.”

Compensation in case of contravention of orders of Commission.

36. For section 43 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 43.

“43. If any person fails to comply, without reasonable cause, with a direction given by—

Penalty for failure to comply with directions of Commission and Director General

(a) the Commission under sub-sections (2) and (4) of section 36; or

(b) the Director General while exercising powers referred to in sub-section (2) of section 41,

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.”

Insertion of
new section
43A.

Power to
impose penalty
for non-
furnishing of
information on
combinations.

Amendment of
section 45.

Amendment of
section 46.

Amendment of
section 49.

Amendment of
section 51.

37. After section 43 of the principal Act, the following section shall be inserted, namely:—

“43A. If any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent. of the total turnover or the assets, whichever is higher, of such a combination.”.

38. In section 45 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.”.

39. In section 46 of the principal Act, —

(a) for the first proviso, the following proviso shall be substituted, namely:—

“Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:”;

(b) in the second proviso, for the word “first”, the word “has” shall be substituted;

(c) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.”.

40. In section 49 of the principal Act, —

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty-days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.”;

(b) in sub-section (2), after the words “Central Government”, the words “or the State Government, as the case may be,” shall be inserted;

(c) in sub-section (3), the words “, as may be prescribed,” shall be omitted.

41. In section 51 of the principal Act, in sub-section (1),—

(i) clause (b) shall be omitted;

(ii) in clause (d), for the words, brackets and letters "clauses (a) to (c)", the words, brackets and letters "clauses (a) and (c)" shall be substituted.

42. In section 52 of the principal Act, in sub-section (2), in the *Explanation*, for the words "Supreme Court", the words "Appellate Tribunal or the Supreme Court" shall be substituted.

Amendment of section 52.

43. After Chapter VIII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter VIII-A.

'CHAPTER VIII A
COMPETITION APPELLATE TRIBUNAL

53A. (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal,—

Establishment of Appellate Tribunal.

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

53B. (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.

Appeal to Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

53C. The Appellate Tribunal shall consist of a Chairperson and not more than two other Members to be appointed by the Central Government.

Composition of Appellate Tribunal.

Qualifications for appointment of Chairperson and Members of Appellate Tribunal.

53D. (1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition matters, including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

Selection Committee.

53E. (1) The Chairperson and Members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- (a) the Chief Justice of India or his nomineeChairperson;
- (b) the Secretary in the Ministry of Corporate AffairsMember;
- (c) the Secretary in the Ministry of Law and JusticeMember.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

53F. The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Provided that no Chairperson or other Member of the Appellate Tribunal shall hold office as such after he has attained,—

- (a) in the case of the Chairperson, the age of sixty-eight years;
- (b) in the case of any other Member of the Appellate Tribunal, the age of sixty-five years.

53G. (1) The salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed.

(2) The salaries, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

53H. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

53-I. The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

53J. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death or resignation, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate

Term of office of Chairperson and Members of Appellate Tribunal.

Terms and conditions of service of Chairperson and Members of Appellate Tribunal.

Vacancies.

Resignation of Chairperson and Members of Appellate Tribunal.

Member of Appellate Tribunal to act as its Chairperson in certain cases.

Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

53K.(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other Member of the Appellate Tribunal, who —

- (a) has been adjudged an insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

53L. The Chairperson and other Members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

53M.(1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

53N.(1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim

Removal and suspension of Chairperson and Members of Appellate Tribunal.

Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases.

Staff of Appellate Tribunal.

Awarding compensation.

for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by the enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

5 of 1908.

Explanation.— For the removal of doubts, it is hereby declared that –

(a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section (1) of section 53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section (2) of section 53Q of the Act are attracted.

(b) enquiry to be conducted under sub-section (3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place.

53-O. (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.

5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

1 of 1872.

45 of 1860.

2 of 1974.

- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*;
- (i) any other matter which may be prescribed.

(3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

53P.(1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

Execution of
orders of
Appellate
Tribunal.

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

53-Q.(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit:

Contravention
of orders of
Appellate
Tribunal.

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence punishable under this sub-section, save on a complaint made by an officer authorised by the Appellate Tribunal.

(2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

53R. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Vacancy in
Appellate
Tribunal not to
invalidate acts
or proceedings.

53-S.(1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Right to legal
representation.

(2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

(3) The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.—The expressions “chartered accountant” or “company secretary” or “cost accountant” or “legal practitioner” shall have the meanings respectively assigned to them in the *Explanation* to section 35.

Appeal to Supreme Court.

53T. The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Power to Punish for contempt.

53U. The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to modifications that, —

70 of 1971.

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the references to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.

Amendment of section 57.

44. In section 57 of the principal Act, for the words “the Commission”, the words “the Commission or the Appellate Tribunal” shall be substituted.

Substitution of new section for section 58.

45. For section 58 of the principal Act, the following section shall be substituted, namely:—

Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants.

“58. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.”.

45 of 1860.

Amendment of section 59.

46. In section 59 of the principal Act, for the words “the Registrar or officers or other employees of the Commission”, the words “the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal” shall be substituted.

Amendment of section 61.

47. In section 61 of the principal Act, for the word “Commission”, the words “Commission or the Appellate Tribunal” shall be substituted.

48. In section 63 of the principal Act, in sub-section (2), —

Amendment of
section 63.

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 9;”;

(ii) clause (c) shall be omitted;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(da) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16;”;

(iv) in clauses (e) and (f), for the words “such other advisers, consultants or officers”, the words “such officers or other employees” shall be substituted;

(v) in clause (g), for the word “Registrar”, the word “Secretary” shall be substituted;

(vi) clauses (h), (i) and (j) shall be omitted;

(vii) after clause (m), the following clauses shall be inserted, namely:—

“(ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal;

(mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E;

(mc) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G;

(md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M;

(me) the fee which shall be accompanied with every application made under sub-section (2) of section 53N;

(mf) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 while trying a suit;”;

(viii) for clause (n), the following clause shall be substituted, namely:—

“(n) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of section 66.”.

5 of 1908.

49. In section 64 of the principal Act, in sub-section (2), for clauses (d) and (e), the following clauses shall be substituted, namely:—

Amendment of
section 64.

(d) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17;

(e) the fee which may be determined under clause (a) of sub-section (1) of section 19;

(f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;

(g) the manner in which penalty shall be recovered under sub-section (1) of section 39;

(h) any other matter in respect of which provision is to be, or may be, made by regulations.”.

Amendment of
section 66.

50. In section 66 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

(1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act (hereafter referred to as the repealed Act) shall stand dissolved:

54 of 1969.

Provided that, notwithstanding anything contained in this sub-section, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the repealed Act may continue to exercise jurisdiction and power under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings (including complaints received by it or references or applications made to it) filed before the commencement of this Act as if the Monopolies and Restrictive Trade Practices Act, 1969 had not been repealed and all the provisions of the said Act so repealed shall *mutatis mutandis* apply to such cases or proceedings or complaints or references or applications and to all other matters.

54 of 1969.

Explanation.—For the removal of doubts, it is hereby declared that nothing in this proviso shall confer any jurisdiction or power upon the Monopolies and Restrictive Trade Practices Commission to decide or adjudicate any case or proceeding arising under the Monopolies and Restrictive Trade Practices Act, 1969 on or after the commencement of this Act.

(1A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 shall, however, not affect,—

54 of 1969.

54 of 1969.

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.”.

(b) in sub-section (2), —

(i) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee,

respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be;”;

(ii) in the third proviso, for the words “the Central Government”, the words “the Competition Commission of India or the Appellate Tribunal, as the case may be,” shall be substituted;

(iii) in the fourth proviso,—

(A) for the words “the Central Government shall, out of the monies standing”, the words “the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing” shall be substituted;

(B) for the portion beginning with the words “the Central Government and such monies” and ending with the words “as may be prescribed” the following shall be substituted, namely:—

“the Competition Commission of India or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed”;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such cases, in which any unfair trade practice has also been alleged), before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.”.

(d) in sub-section (4), for the words “on or before the commencement of this Act shall, on such commencement”, the words, brackets and figure “on or before the expiry of two years referred to in the proviso to sub-section (1),” shall be substituted;

(e) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.”.

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalization which required that the Indian economy be enabled to allow competition in the market from within the country and outside. The Competition Act, 2002 (hereinafter referred to as the Act) provided for the establishment of a Competition Commission, (the Commission) to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto.

2. The Competition Commission of India was established on the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. While disposing of the writ petition on the 20th January, 2005, the Hon'ble Supreme Court held that if an expert body is to be created by the Union Government, it might be appropriate for the Government to consider the creation of two separate bodies, one with expertise for advisory and regulatory functions and the other for adjudicatory functions based on the doctrine of separation of powers recognised by the Constitution. Keeping in view the judgment of the Hon'ble Supreme Court, the Competition (Amendment) Bill, 2006 was introduced in Lok Sabha on the 9th March, 2006 and the same was referred for examination and report to the Parliamentary Standing Committee. Taking into account the recommendations of the Committee, the Competition (Amendment) Bill, 2007 is being introduced.

3. The Competition (Amendment) Bill, 2007, *inter alia*, provides for the following :—

- (a) the Commission shall be an expert body which would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the Act and it would also have advisory and advocacy functions in its role as a regulator;
- (b) for mandatory notice of merger or combination by a person or enterprise to the Commission within thirty days and to empower the Commission for imposing a penalty of up to one per cent. of the total turnover or the assets, whichever is higher, on a person or enterprise which fails to give notice of merger or combination to the Commission;
- (c) for establishment of the Competition Appellate Tribunal, which shall be a three member *quasi judicial* body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission;
- (d) for adjudication by the Competition Appellate Tribunal of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act;
- (e) for implementation of the orders of the Competition Appellate Tribunal as a decree of a civil court;
- (f) for filing of appeal against the orders of the Competition Appellate Tribunal to the Supreme Court;
- (g) for imposition of a penalty by the Commission for contravention of its orders and in certain cases of continued contravention a penalty which may extend to rupees twenty-five crores or imprisonment which may extend to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit, may be imposed.

4. The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of Competition Commission, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the Competition Commission is duly constituted. Cases still remaining pending after this two year period, would be transferred to Competition Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 9th August, 2007.

PREM CHAND GUPTA.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA**

[Copy of letter No. 5/18/2006-IGC, dated the 20th August, 2007 from Shri Prem Chand Gupta, Minister of Corporate Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition (Amendment) Bill, 2007, recommends introduction of the Bill under article 117(1) of the Constitution and also recommends the consideration of the Bill under article 117(3) of the Constitution.

Notes on Clauses

Clause 2.—This clause seeks to amend section 2 of the Competition Act, 2002 relating to definitions. It is proposed to define the expression “Appellate Tribunal” used in the Bill.

Clause 3.—This clause seeks to amend section 4 of the Competition Act, 2002 relating to abuse of dominant position.

The existing provisions of section 4 applies only to an enterprise and not to the group of enterprises. Clause (c) of sub-section (2) of section 4 states that there shall be an abuse of dominant position if an enterprise indulges in practice or practices resulting in denial of market access.

It is proposed to amend the provisions of section 4 so as to make it applicable to group of enterprises also. It is also proposed to amend clause (c) of sub-section (2) of said section so as to insert the words “in any manner”. This amendment is clarificatory in nature.

Clause 4.—This clause seeks to amend section 5 of the Competition Act, 2002 relating to combination.

Under the existing provisions of section 5, there is no specific provision regarding local nexus for foreign entities which are parties to combinations.

It is proposed to substitute item (B) in sub-clause (i) and item (B) in sub-clause (ii) of clause (a) of section 5 to provide for a local nexus for combinations involving foreign entity and an Indian entity. A threshold value of local assets and operations in terms of asset value of at least rupees 500 crores and turnover of at least rupees 1500 crores, is proposed for operations in India in addition to the existing global asset or turnover limits provided in the Act.

Clause 5.—This clause seeks to amend section 6 of the Competition Act, 2002 relating to regulation of combinations.

Under the existing provisions of section 6, it is voluntary for a person or enterprise to give notice of the formation of combination within seven days to the Commission.

It is proposed to amend sub-section (2) of section 6 so as to provide for mandatory notice of combinations to the Commission within thirty days. It is also proposed to add sub-section (2A) providing that no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under section 31, whichever is earlier.

Clause 6.—This clause seeks to substitute section 8 of the Competition Act, 2002 relating to composition of Competition Commission of India.

The new clause provides that the Commission shall consist of a Chairperson and not less than two and not more than six other Members instead of ten Members as provided for under the existing provisions of section 8, to be appointed by the Central Government. It also proposes to remove from eligibility requirement that the person who has been or is qualified to be a Judge of a High Court, and to omit the special knowledge of, and professional experience of administration or in any other matter from the qualifications for appointment as Chairperson or any other Member.

Clause 7.—This clause seeks to substitute section 9 of the Competition Act, 2002 relating to selection of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions, the Chairperson and other Members shall be selected in the manner as may be prescribed by the rules made by the Central Government. The Competition Commission of India (Selection of Chairperson and other Members of the

Commission) Rules, 2003 made under this section provide for selection of the Chairperson and other Members by a Selection Committee consisting of (a) a person, who has been a retired judge of the Supreme Court or a High Court or a retired Chairperson of a Tribunal established or constituted under an Act of Parliament or a distinguished jurist or a Senior Advocate for five years or more – as Member, (b) a person who has special knowledge of, and professional experience of twenty-five years or more in international trade, economics, business, commerce or industry – as Member, (c) a person who has special knowledge of, and professional experience of twenty-five years or more in accountancy, management, finance, public affairs or administration – as Member nominated by the Central Government.

The new clause provides that the Chairperson and other Members of the Competition Commission of India shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of (a) the Chief Justice of India or his nominee – as Chairperson, (b) the Secretary in the Ministry of Corporate Affairs – as Member, (c) the Secretary in the Ministry of Law and Justice – as Member and (d) two experts of repute having special knowledge in specified fields – as Member.

It also provides that the term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Clause 8.—This clause seeks to amend section 10 of the Competition Act, 2002 relating to term of office of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions contained in section 10, no Chairperson of the Competition Commission of India shall hold office as such after he has attained the age of sixty-seven years and no other Member shall hold office as such after he has attained the age of sixty-five years.

It is proposed to amend the said section 10 to provide that the Chairperson or other Member shall not hold office as such after he has attained the age of sixty-five years.

Clause 9.—This clause seeks to amend section 12 of the Competition Act, 2002 relating to restriction on employment of Chairperson and other Members of the Competition Commission of India in certain cases.

Under the existing provisions contained in the said section, the Chairperson and other Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act. However, this provision does not apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State, or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

It is proposed to amend the said section so as to increase the said period of restriction on employment of Chairperson and other Members of the Competition Commission of India from one year to two years.

Clause 10.—This clause seeks to substitute section 13 of the Competition Act, 2002 relating to financial and administrative powers of Member Administration.

Under the existing provisions contained in the said section, the Central Government is to designate any Member as Member Administration who shall exercise such financial and administrative powers as are vested in him under the rules.

It is proposed to substitute the said section 13 by a new section to provide that the Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. However, the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit to any other Member or officer of the Commission.

Clause 11.—This clause seeks to amend section 16 of the Competition Act, 2002 relating to appointment of Director General, etc.

Under the existing provisions contained in the said section, the Central Government can appoint a Director General and as many Additional, Joint, Deputy or Assistant Director General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of the Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under the Act.

It is proposed to amend the said section so as to, *inter alia*, omit the “advisers” and “consultants” from the scope of section 16 and therefore the Central Government would not appoint “advisers” and “consultants” in the Competition Commission of India. The power to engage the “advisers”, and “consultants” is proposed to be conferred upon the Competition Commission of India.

Clause 12.—This clause seeks to substitute section 17 of the Competition Act, 2002 relating to Registrar and officers and other employees of the Competition Commission of India by a new section.

Under the existing provisions contained in the said section, the Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

It is proposed to substitute said section so as to confer power upon the Commission to appoint a Secretary instead of Registrar in addition to officers and other employees in the discharge of its functions under the said Act and also proposed to confer power on the Commission to engage such experts and professionals of integrity and outstanding ability who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission.

Clause 13.—This clause seeks to amend section 19 of the Competition Act, 2002 relating to inquiry into certain agreements and dominant position of enterprise.

Under the existing provisions contained in clause (a) of sub-section (1) of said section, the Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on receipt of a complaint.

It is proposed to amend said section so as to substitute “receipt of a complaint”, by the words “receipt of any information, in such manner” to enable the Commission to inquire into any alleged contravention on receipt of any information instead of receipt of a complaint.

Clause 14.—This clause seeks to amend sub-section (2) of section 20 of the Competition Act, 2002 relating to inquiry into combination by the Commission.

Under the existing provisions contained in sub-section (2) of section 20, the Commission shall, upon receipt of a reference under sub-section (1) of section 21, inquire whether the combination referred to in the reference is likely to cause an appreciable adverse effect on competition in India.

It is proposed to amend the said sub-section (2) so as to delete the provision of inquiry on a reference from a statutory authority as the reference has been made on an issue, which is under consideration of the statutory authority.

Clause 15.—This clause seeks to amend sub-sections (1) and (2) of section 21 of the Competition Act, 2002 relating to reference by statutory authority.

Under the existing provisions contained in sub-section (1) of said section where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of the Act then such statutory authority may make a reference in

respect of such issue to the Commission. Under the existing sub-section (2), on receipt of a reference from a statutory authority, the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit.

It is proposed to add a proviso to said sub-section (1) so as to provide that any statutory authority may *suo motu* make a reference to the Commission. It is also proposed to amend sub-section (2) so as to provide that the statutory authority on the opinion of the Commission shall give its findings recording reasons therefor.

Clause 16.—This clause seeks to insert a new section 21A regarding reference by Commission.

This new section provides for making of a reference by the Commission to statutory authorities on an issue raised in any matter before it or *suo motu*. The statutory authority shall be duty bound to give its opinion within sixty days to the Commission and the Commission shall consider the opinion of the statutory authority and give its findings recording reasons therefor.

Clause 17.—This clause seeks to substitute section 22 of the Competition Act, 2002 relating to Benches of the Competition Commission of India.

Under the existing provisions contained in the said section, the jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.

It is proposed to substitute the said section for the meetings of the Competition Commission of India. It, *inter alia*, provides that the Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by the regulations. It also provides that all questions which come up before any meeting of the Commission shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote. It also provides that the quorum for such meeting shall be three Members.

Clause 18.—This clause seeks to omit sections 23, 24 and 25 of the Competition Act, 2002 relating to distribution of business of the Competition Commission of India amongst Benches, procedure for deciding a case where Members of a Bench differ in opinion and jurisdiction of Bench.

Clause 19.—This clause seeks to substitute section 26 of the Competition Act, 2002 relating to procedure for enquiry on complaints under section 19.

It is proposed to provide that on receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter. It also provides that on receipt of reference under the above provision, if the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be. The Director General on receipt of direction under the above provision shall submit a report on his findings within such period as may be specified by the Commission. The Commission may forward a copy of the report to the parties concerned. It also provides that if the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General. It provides that if the Commission agrees to the recommendations of the Director General, it shall close the matter and pass such order as it deems fit and communicate its order to the authorities mentioned. It further provides that after consideration of the objections or suggestions referred to above, if any, the Commission

is of the opinion that further investigation is called for, it may direct for further investigation. It further provides that if the report of the Director General recommends that there is contravention of any of the provisions of the Act and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of the Act. It is also proposed to provide that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

Clause 20. —This clause seeks to amend section 27 of the Competition Act, 2002 relating to orders by Commission after inquiry into agreements or abuse of dominant position.

The existing provisions contained in the said section, *inter alia*, confer power upon the Commission to pass orders awarding compensation to parties in accordance with the provisions contained in section 34.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 43 of the Bill. It is, therefore, proposed to omit clauses (c) and (f) of section 27 which confer powers on the Commission to pass orders awarding compensation.

It is also proposed to add a proviso to this section providing that if the Commission comes to a finding that an enterprise, in contravention to section 3 or section 4 of the Act, is a member of a group as defined in clause (b) of the *Explanation* to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass any orders against such members of the group.

Clause 21. —This clause seeks to amend section 28 of the Competition Act, 2002 relating to division of enterprise enjoying dominant position.

Under the existing provisions contained in the said section the Central Government can, on recommendation of the Commission, order division of enterprise enjoying dominant position.

It is proposed to amend section 28 so as to confer said power upon the Commission to order division of an enterprise instead of the Central Government to order the division.

Clause 22. —This clause seeks to amend section 29 of the Competition Act, 2002 relating to procedure for investigation of combinations.

It is, *inter alia*, proposed to insert a new sub-section (1A) to provide that the Commission may, after receipt of the response of the parties to the combination under sub-section (1), call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

Clause 23. —This clause seeks to substitute section 30 of the Competition Act, 2002 relating to inquiry into disclosures under sub-section (2) of section 6.

Under the existing provisions contained in the said section, where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire, (a) whether the disclosure made in the notice is correct, (b) whether the combination has, or is likely to have, an appreciable adverse effect on competition.

It is proposed to substitute section 30 so as to provide that where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its *prima facie* opinion and proceed in accordance with the provisions of section 29.

Clause 24. —This clause seeks to amend sub-section (1) of section 31 of the Competition Act, 2002 relating to orders of Commission on certain combinations.

Under the existing provisions contained in the said sub-section (1) the combination is deemed to have been approved by the Commission if the Commission does not pass

orders on expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29.

It is proposed to provide for deemed approval for the combination if the Commission does not pass orders in two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6. This amendment is consequential in nature.

Clause 25. —This clause seeks to amend section 32 of the Competition Act, 2002 relating to acts taking place outside India but having an effect on competition in India. The proposed amendment is clarificatory in nature.

Clause 26. —This clause seeks to substitute section 33 of the Competition Act, 2002 relating to power to grant interim relief.

The existing provisions of section 33 provides that where during an inquiry before the Commission it is proved to the satisfaction of the Commission that an act in contravention of sections 3, 4 and 6 has been committed, the Commission may by order grant a temporary injunction restraining any party from carrying on such act. It also provides that where during the inquiry before the Commission, if the Commission is satisfied that import of any goods is likely to contravene sections 3, 4 and 6 it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities. It further provides that the provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court.

The proposed section 33 provides that where during an inquiry, the Commission is satisfied that an act in contravention of sections 3, 4 and 6 has been committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party.

Clause 27. —This clause seeks to omit section 34 of the Competition Act, 2002 relating to power to award compensation.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 43 of the Bill. It is, therefore, proposed to omit aforesaid section 34 conferring power upon the Competition Commission of India to award compensation.

Clause 28. —This clause seeks to amend section 35 of the Competition Act, 2002 relating to appearance before the Competition Commission of India.

Under the existing provisions contained in the said section, a complainant or defendant or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

It is proposed to amend the said section so as to substitute the words "person or an enterprise", for the words "complainant or defendant" for appearance before the Commission.

Clause 29. —This clause seeks to substitute section 36 of the Competition Act, 2002 relating to power of Commission to regulate its own procedure.

The existing section 36 confer powers upon the Commission, *inter alia*, to dismiss an application in default or deciding it *ex parte* or exercise power in respect of any other matter which may be prescribed. It also provides that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It is proposed to substitute the said section so as to provide that the Commission may direct any person to produce before the Director General or Secretary or an officer authorised by it the books or other documents, being documents relating to any trade, in the custody or under the control of such person for the purpose of examination under the Act and also that the Commission may direct any person to furnish to the Director General or Secretary or any officer authorised by it, such other information as may be in his possession in relation to the trade carried on by such person as required for the purpose of this Act.

Clause 30.—This clause seeks to omit section 37 of the Competition Act, 2002 relating to review of orders of the Competition Commission of India.

Clause 31.—This clause seeks to substitute section 39 of the Competition Act, 2002 relating to execution of orders of the Competition Commission of India.

The existing section provides that every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be.

It is proposed to substitute said section, *inter alia*, to provide that if a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in the manner as may be specified by regulations. Sub-section (2) of proposed section provides that in a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Competition Act, 2002 in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under the Income-tax Act, 1961 for recovery of the penalty as tax due under the said Act. It is also proposed to provide that any reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act and any reference to appeal in Chapter XVIID and the Second Schedule of the Income-tax Act, 1961, shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.

Clause 32.—This clause seeks to omit section 40 of the Competition Act, 2002 relating to appeal.

Under the existing provisions contained in the said section, any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

It is proposed to insert, by clause 43 of the Bill, new sections 53B and 53T to provide filing of appeal from any direction, decision or order referred to in clause (a) of new section 53A to the Appellate Tribunal and filing of an appeal to the Supreme Court from any decision or order of the Appellate Tribunal. Omission of section 40 is therefore consequential in nature.

Clause 33.—This clause seeks to amend section 41 of the Competition Act, 2002 relating to Director General to investigate contraventions.

The existing sub-section (3) of section 41 provides that, without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956, so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

It is proposed to add an *Explanation* to sub-section (3) of section 41 to provide that the words “the Central Government” under section 240 of the Companies Act, 1956 shall be construed as “the Commission” and the word “Magistrate” under section 240A of the

Companies Act, 1956 shall be construed as "the Chief Metropolitan Magistrate, Delhi".

Clause 34.—This clause seeks to substitute section 42 of the Competition Act, 2002 relating to contravention of orders of the Competition Commission of India.

Under the existing provisions contained in the said section if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakh.

It is proposed to substitute the said section so as to provide that if any person, without reasonable cause fails to comply with the orders or directions issued under the sections specified therein, he shall be punishable with fine which may extend to rupees one lakh for each day subject to a maximum of rupees ten crore as the Commission may determine. It also provides that if any person does not comply with the orders or directions issued under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees twenty-five crore or with both as the Chief Metropolitan Magistrate, Delhi may deem fit. It further provides that the Chief Metropolitan Magistrate, Delhi may pass such orders as it may deem fit on a complaint filed before it by the Commission for non-compliance of its orders.

Clause 35.—This clause seeks to insert a new section 42A regarding compensation in case of contravention of orders of Commission.

The proposed new section provides that any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission.

Clause 36.—This clause seeks to substitute section 43 of the Competition Act, 2002 relating to penalty for failure to comply with the directions of the Competition Commission of India and Director General of the Commission. The new section seeks to provide that a penalty which may extend to rupees one lakh for each day subject to a maximum of rupees one crore may be imposed on the person who, without reasonable cause, fails to comply with the directions given by the Commission and the Director General issued under the specified sections.

Clause 37.—This clause seeks to insert a new section 43A regarding power to impose penalty for non-furnishing of information on combinations.

The new section seeks to empower the Commission for imposing a penalty on the person or enterprise for not giving the notice to the Commission about the combination under sub-section (2) of section 6. This insertion is consequential in nature.

Clause 38.—This clause seeks to substitute sub-section (1) of section 45 of the Competition Act, 2002 regarding penalty for offences in relation to furnishing of information.

The existing provision provides for imposition of a penalty on a person, which may extend to rupees ten lakh, for furnishing documents or making statements which he knows and has reasons to believe to be false.

It is proposed to provide for imposition of a fine which may extend to rupees one crore, as the Commission may determine, on a person for furnishing documents or making statements which he knows and has reason to believe to be false.

Clause 39.—This clause seeks to amend section 46 of the Competition Act, 2002 relating to power to impose lesser penalty.

Under the existing provisions of the said section the Competition Commission of

India has been conferred power to impose lesser penalty in the circumstances mentioned in that section. The first proviso to said section provides that the Commission shall not impose lesser penalty in cases where proceedings, for the violation of any of the provisions of this Act or the rules or the regulations, have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure.

It is proposed to substitute the said first proviso to provide that the Commission shall not impose lesser penalty in cases where the report of investigation directed under section 26 has been received before making of such disclosure. It is also proposed to amend second proviso so as to provide for lesser penalty upon a person who discloses the information about a cartel. It is also proposed to add a third proviso to the said section providing that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.

Clause 40.—This clause seeks to amend section 49 of the Competition Act, 2002 relating to Competition advocacy.

Under the existing provisions contained in sub-section (1) of the said section the Central Government may, in formulating a policy on competition (including review of laws related to competition), make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit. The existing sub-section (2) provides that the opinion given by the Commission shall not be binding upon the Central Government in formulating such policy. The existing sub-section (3) provides that the Commission shall take suitable measures, for the promotion of competition advocacy, creating awareness and imparting training about competition issues in the manner as may be prescribed by rules.

It is proposed to amend sub-section (1) of the said section so as to enable the Central Government to make reference to the Commission on any other matter also apart from the existing proviso of making a reference on policy on competition (including review of laws related to competition) and also to enable the State Government to make a reference to the Commission in formulating a policy on competition or on any other matter. It is also proposed to amend sub-section (2) of the said section to provide that the opinion of the Commission shall not be binding on State Government as well as the Central Government. It is further proposed to amend sub-section (3) of the said section to provide that the Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues in the manner as may be decided by the Commission and not as may be prescribed by rules.

Clause 41.—This clause seeks to amend section 51 of the Competition Act, 2002 relating to constitution of fund.

The provisions contained in clause (b) of sub-section (1) of the said section, *inter alia*, provide that the monies received as costs from parties to proceedings before the Commission shall be credited to the “Competition Fund” constituted by that section.

It is proposed to omit said clause (b).

Clause 42.—This clause seeks to amend section 52 of the Competition Act, 2002 relating to accounts and audit.

The *Explanation* to the existing sub-section (2) of the said section clarified that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

It is proposed to amend the said *Explanation* so as to provide that the orders of the Commission, being matters appealable to the Competition Appellate Tribunal shall also not be subject to audit under this section.

Clause 43.—This clause seeks to insert new Chapter VIII A to the Competition Act, 2002 relating to establishment of Competition Appellate Tribunal.

The new Chapter VIII A contains provisions for (a) establishment of Appellate Tribunal, (b) appeal to Appellate Tribunal, (c) composition of Appellate Tribunal, (d) qualifications for appointment of Chairperson and Members of Appellate Tribunal, (e) Selection Committee, (f) term of office of Chairperson and Members of Appellate Tribunal, (g) terms and conditions of service of Chairperson and Members of Appellate Tribunal, (h) vacancies, (i) resignation of Chairperson and Members, (j) Member of Appellate Tribunal to act as Chairperson in certain cases, (k) removal and suspension of Chairperson and Members of Appellate Tribunal, (l) restriction on employment of Chairperson and other Members in certain cases, (m) staff of Appellate Tribunal, (n) Procedure for awarding compensation, (o) procedure and powers of Appellate Tribunal, (p) execution of orders of Appellate Tribunal, (q) contravention of orders of Appellate Tribunal, (r) vacancy in Appellate Tribunal not to invalidate acts or proceedings, (s) right to legal representation, (t) appeal to the Supreme Court and (u) power to punish for contempt.

Clause 44.—This clause seeks to amend section 57 of the Competition Act, 2002 relating to restriction on disclosure of information.

It is proposed to bring the Appellate Tribunal also within the scope of section 57 of the Competition Act, 2002 consequent to the proposal to insert a new Chapter VIII-A *vide* clause 43 of the Bill. The proposed amendment is consequential in nature.

Clause 45.—This clause seeks to amend section 58 of the Competition Act, 2002 relating to Members, Director General, Registrar, officers and other employees, etc., of the Competition Commission of India.

Under the existing provisions contained in the said section, the Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of the Competition Act, 2002, to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 12 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 to establish the Competition Appellate Tribunal. Hence, it is proposed to bring the Secretary, officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal within the scope of section 58 of the Competition Act, 2002. The proposed amendment is consequential in nature.

Clause 46.—This clause seeks to amend section 59 of the Competition Act, 2002 relating to protection of action taken in good faith.

Under the existing provisions contained in the said section, no suit, prosecution or other legal proceedings can lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Clause 12 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary, officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal within the scope of the aforesaid section. The proposed amendment is consequential in nature.

Clause 47.—This clause seeks to amend section 61 of the Competition Act, 2002 relating to exclusion of jurisdiction of civil courts.

Under the existing provisions contained in the said section, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to exclude the jurisdiction of civil courts in respect of any matter in which the Commission or Appellate Tribunal is empowered to determine. The proposed amendment is consequential in nature.

Clause 48.—This clause seeks to amend section 63 of the Competition Act, 2002 relating to power to make rules.

It is proposed to amend said section so as to confer powers upon the Central Government to make rules in respect of certain matters specified in that section and to make certain other amendments which are consequential in nature.

Clause 49.—This clause seeks to amend section 64 of the Competition Act, 2002 relating to power to make regulations by the Competition Commission of India.

It is proposed to amend said section 64 so as to confer powers upon the Competition Commission of India to make regulations in respect of certain matters specified in the said section.

Clause 50.—This clause seeks to amend section 66 of the Competition Act, 2002 relating to repeal and saving.

Under the existing provisions, the Monopolies and Restrictive Trade Practices Act, 1969 is proposed to be repealed and upon such repeal, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the repealed Act shall stand dissolved. Sub-sections (2) to (10) of the aforesaid section deals with the matters arising out of such repeal.

It is proposed to amend said section 66 so as to provide that the Monopolies and Restrictive Trade Practices Commission may continue to exercise jurisdiction and powers under the Monopolies and Restrictive Trade Practices Act, 1969 for a period of two years from the date of bringing into force of section 66 of the Competition Act, 2002 only in respect of cases or proceedings filed before such commencement. It further provides for the transfer of pending cases after the two years period to the Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases. It also provides that the staff of the Monopolies and Restrictive Trade Practices Commission who has been employed on regular basis by the Monopolies and Restrictive Trade Practices Commission shall, on its dissolution, become employees of the Competition Commission or the Appellate Tribunal in the manner as may be specified by the Central Government.

FINANCIAL MEMORANDUM

Clause 43 of the Bill seeks to establish a Competition Appellate Tribunal with a Chairperson and up to two Members, along with associated staff, whose expenses would be paid from the Consolidated Fund of India. However, clause 6 of the Bill seeks to reduce the strength of the Competition Commission from ten additional Members to six additional Members. Clause 17 of the Bill further provides for Commission to function as a collegium and not through Benches, leading to absence of need for provision of offices to these Benches, and the need for branches of Director General's office at these Benches.

2. The expenditure to be incurred on creation of the Competition Appellate Tribunal would be rupees 109.61 lakh per annum. However, there would be a decrease in expenditure up to an extent of rupees 222.39 lakh in a year due to reduction of strength of Competition Commission of India from ten additional members to six additional members, and by removal of the concept of Benches functioning at different locations, and their associated Director General subordinate offices. Thus, there would be an overall saving of rupees 112.78 lakh per annum.

3. Thus, there would not be any additional financial outgo due to the changes proposed in the amendment Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 48 of the Bill seeks to amend section 63 of the Competition Act, 2002. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate to, *inter alia*, provide for (a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 9; (b) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16; (c) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under sub-section (3) of section 16; (d) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under sub-section (4) of section 16; (e) the salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees under sub-section (2) of section 17; (f) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal; (g) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E; (h) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G; (i) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M; (j) the fee which shall be accompanied with every application made under sub-section (2) of section 53N; (k) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure while trying a suit; (l) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall be dealt with by the Commission or the Appellate Tribunal under the fourth proviso to sub-section (2) of section 66.

2. Clause 49 of the Bill seeks to amend section 64 of the Competition Act, 2002. This clause empowers the Competition Commission of India to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such regulations may be made are specified therein. These matters relate to, *inter alia*, (a) the procedure to be followed for engaging the experts and professionals under sub-section (3) of section 17; (b) the manner and fee which may be determined under clause (a) of sub-section (1) of section 19; (c) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22; (d) the manner in which penalty shall be recovered under sub-section (1) of section 39; (e) any other matter in respect of which provision is to be, or may be, made by regulations.

3. The rules made by the Central Government and the regulations made by the Competition Commission of India shall be laid, as soon as may be after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.

BILL No. 73 OF 2007

A Bill to provide for the declaration of the Lakhipur-Bhanga Stretch of the Barak river to be a national waterway and also to provide for the regulation and development of the said Stretch of that river for the purposes of shipping and navigation on the said waterway and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the National Waterway (Lakhipur-Bhanga Stretch of the Barak River) Act, 2007. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Declaration
of Lakhipur-
Bhanga
Stretch of
Barak river
to
be national
waterway.

Declaration as
to expediency
of control by
the Union of
Lakhipur-
Bhanga
Stretch of
Barak river
for certain
purposes.

2. The Lakhipur-Bhanga Stretch of the Barak river, the limits of which are specified in the Schedule, is hereby declared to be a national waterway.

3. It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation and development of Lakhipur-Bhanga Stretch of the Barak river for the purposes of shipping and navigation on the national waterway to the extent provided in the Inland Waterways Authority of India Act, 1985.

82 of 1985.

THE SCHEDULE

(See section 2)

LIMITS OF THE NATIONAL WATERWAY (LAKHIPUR-BHANGA STRETCH OF THE BARAK RIVER)

The eastern limit of the waterway shall be a line drawn across the Barak river in the State of Assam at Lakhipur ferry ghat (at latitude 24° 47° 26° north and longitude 93° 00° 14° east) and the western limit shall be a line drawn across the Barak river at a distance of two hundred meters east of its bifurcation point at Bhanga (at latitude 24° 52° 33° north and longitude 92° 29° 48° east).

STATEMENT OF OBJECTS AND REASONS

In the absence of a suitable organisation and paucity of resources with State Governments, development of inland water transport has not made much headway. There are certain advantages in this mode of transport, such as its low cost of transport, energy efficiency, generation of employment among weaker sections of the society and eco-friendly nature. Various committees set up by the Government for the purpose of looking into this matter recommended that the Central Government should declare certain waterways as National Waterways and assume responsibility of their development.

2. The Central Government has accordingly constituted the Inland Waterways Authority of India under the Inland Waterways Authority of India Act, 1985 (82 of 1985) for the regulation and development of inland waterways for the purposes of shipping and navigation. The Allahabad-Haldia stretch of the Ganga-Bhagirathi-Hooghly river has already been declared as a National Waterway under the National Waterway (Allahabad-Haldia Stretch of Ganga-Bhagirathi-Hooghly River) Act, 1982 (49 of 1982). Similarly, the Sadiya-Dhubri stretch of the Brahmaputra river and the Kollam-Kottapuram stretch of the West Coast Canal along with Champakara and Udyogmandal canals have also been declared as National Waterways respectively under the National Waterway (Sadiya-Dhubri Stretch of the Brahmaputra River) Act, 1988 (40 of 1988) and the National Waterway (Kollam-Kottapuram Stretch of the West Coast Canal and Champakara and Udyogmandal Canals) Act, 1992 (25 of 1992). Consequently, the Inland Waterways Authority of India has taken up the development, maintenance and management of these National Waterways.

3. It is now proposed to declare the Lakhipur-Bhanga stretch of the Barak river as a National Waterway. Infrastructural facilities currently available on this waterway are not adequate for safe, convenient and sustained shipping and navigation by large mechanised crafts. Therefore, the waterway is required to be developed by providing adequate infrastructure for safe, convenient and sustained shipping operations. The regulation and development of the proposed National Waterway under the control of the Union for the purposes of shipping and navigation is in the public interest and declaration to that effect has also been made in this Bill.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

T.R. BAALU.

The 21st August, 2007.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. NW-12013/1/2000-IWT(Vol. II) dated the 6th August, 2007 from Shri T.R. Baalu, Minister of Shipping, Road Transport and Highways to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed National Waterway (Lakhipur-Bhanga Stretch of the Barak River) Bill, 2007, recommends to the House the consideration of the Bill under article 117 (3) of the Constitution.

FINANCIAL MEMORANDUM

The regulation and development of the proposed national waterway will be carried out by the Inland Waterways Authority of India constituted under the Inland Waterways Authority of India Act, 1985. Consequently, three distinct functions namely, development, maintenance and management of the proposed waterway will devolve on the Inland Waterways Authority of India. It has been visualised that inland water transport traffic to the tune of 10.53 lakh tones is likely to be carried on the proposed national waterway after its full development by the year 2011-12. This traffic is expected to be handled at four terminals, namely, Lakhipur, Silchar, Badarpur and Bhanga. The development of the river along with provisions of infrastructure facilities for the purposes of shipping and navigation to handle the above mentioned traffic includes the development of the waterway for navigation, channel marking, construction of terminals, transit sheds, installation of handling equipment, etc. It is estimated that the expenditure with respect to the said development will be of the order of rupees forty-six crores which will be of a non-recurring nature.

2. In addition, it is estimated that an expenditure of recurring nature of the order of rupees four crores twenty lakhs annually will be incurred for operating the waterway and terminals.

P. D. T. ACHARY,
Secretary-General.